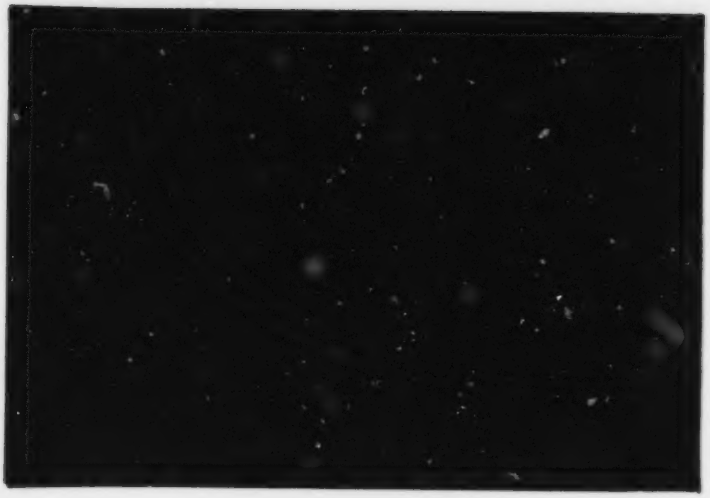

P·A·Y·E·Q·U·I·T·Y

Nova Scotia

Pay Equity Commission

PO Box 697
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B3J 2T8

91-02591/

REPORT TO THE MINISTER OF LABOUR

On Strategies for Future Pay Equity Implementation in Nova Scotia

Part I:

How the pay equity process currently prescribed in the Pay Equity Act could be made more comprehensive.

January 1991

NOVA SCOTIA PAY EQUITY COMMISSION

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Our file no:

January 7, 1991

The Honourable Ronald S. Russell, C.D.
Minister of Labour
Province of Nova Scotia
P.O. Box 697
Halifax, Nova Scotia
B3J 2T8

Dear Mr. Russell:

On behalf of the Pay Equity Commission, I am pleased to submit a report on how the pay equity process currently prescribed in the Pay Equity Act could be made more comprehensive. This report fulfils one part of the Commission's mandate which is to provide you with recommendations on strategies for future pay equity implementation in Nova Scotia.

As you are aware, the Call for Submissions also requested submissions relating to the implementation of pay equity in the private sector. The Commission will be dealing with these over the next few months.

I would be pleased to answer questions or provide clarification regarding this Report.

Sincerely,

Patricia Paul

Patricia Paul
Chairperson

Enclosure
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1.0 INTRODUCTION

Pay equity legislation is based on the principle that wages should be based on the value of work performed, regardless of whether a man or woman is doing the job. Pay equity requires employers to look differently at the kind of work that has traditionally been undervalued. It is a concept which enables a comparison to be made between two different jobs to determine the value of that work to an employer.

1.1 Background

The purpose of the Nova Scotia Pay Equity Act[1] "is to increase the pay of employees in classes which are predominately female where it is determined, by the process set out in this Act, that by reason of sex discrimination, those employees are paid less than they should be." The Act specifies that "sex discrimination in pay is to be identified by undertaking comparisons between each female-dominated class in an employee unit and all male-dominated classes employed by the employer, whether in the same or another employee unit, in terms of pay and in terms of the value of the work performed" (Subsection 13(3)). To achieve these comparisons, the Act sets out a process and schedule to bring about pay equity in the following sectors:

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[1] Chapter 337 of the Revised Statutes of Nova Scotia, 1989 as amended by 1990, c.41.

NOVA SCOTIA: PAY EQUITY TIMETABLE

		Process Begins	Evaluation System Chosen	Job Evaluation Completed	Adjustments to Begin	Adjustments Completed
Phase 1	Civil Service Corrections Employees Highway Workers Non-civil service employees of the V.G. & N.S. hospitals	Sept. 1/88	March 1/89	June 1/90	Sept. 1/90	Sept. 1/94
Phase 2	Crown Corporations Hospitals School Boards	Sept. 1/89	March 1/90	June 1/91	Sept. 1/91	Sept. 1/95
Phase 3	Universities Municipalities Municipal Enterprises	October 1/90	April 1/91	July 1/92	October 1/92	October 1/96
Phase 4	Private Sector	Consultation currently underway.				

1.2 The Nova Scotia Pay Equity Commission

The Nova Scotia Pay Equity Commission is responsible for administering the Pay Equity Act. The Commission includes a part-time chairperson and 10 part-time members. Members of the Commission are appointed by government and include representatives of labour and management. Specifically, the Commission is legislated to: monitor implementation of pay equity; determine the manner in which employee representatives are selected; determine those matters on which employers and employees fail to agree; provide information and advice respecting pay equity; prepare and maintain statistics respecting pay equity; and to prepare and disseminate educational material concerning pay equity.

1.3 Call for Submissions

In 1990, the Minister of Labour, The Honourable Ronald S. Russell, C.D., asked the Pay Equity Commission to look at two issues and to prepare a report with recommendations regarding a future pay equity strategy for Nova Scotia: (1) how the current Pay Equity Act could be made more comprehensive; and (2) how pay equity could be implemented in the private sector.

In July 1990, the Pay Equity Commission began the public consultation with a Call for Written Submissions. An advertisement (Appendix 1) appeared in all daily and weekly newspapers in the province during the week of July 16, 1990. In addition, a notice was sent to all groups and individuals on the Commission's mailing list (approximately 300) and an article appeared in the July issue of the Commission's newsletter.

The Commission received 16 written submissions which dealt with issues regarding the current legislation (See Appendix 2). Twelve written submissions were received regarding pay equity in the private sector. On November 22 and 23, 1990, 11 groups and individuals appeared before the Commission in support of their written submissions regarding the current Act.

1.3 Objectives of the Report to the Minister of Labour

This report, Part I, will look exclusively at how the current Act could be made more comprehensive. Following an

assessment of the impact of the Pay Equity Act in Phases 1,2, and 3, the Commission has identified a number of critical issues arising from the application of the Act in these sectors. Based on staff research of other jurisdictions, matters identified through the public consultation process, the Commission's experience and staff research regarding pay equity, the Commission has recommended a number of changes to the Act.

Part II will form a separate report and will look exclusively at how pay equity could be implemented in the private sector.

2.0 MODELS FOR IMPLEMENTATION OF PAY EQUITY

In looking at possible changes to the current Pay Equity Act, it is important to note that there are three major implementation models which have evolved upon which pay equity may be based.

2.1 Pro-Active

Where an employer is required to establish an implementation plan to correct any gender-based wage discrimination in her/his establishment. In addition to Nova Scotia, this approach is the basis for pay equity initiatives in Manitoba, Ontario, Prince Edward Island, New Brunswick, Newfoundland, and British Columbia.

2.2 Complaint-based

Where an individual employee or a group of employees must identify an alleged inequity and file a complaint before pay equity implementation is triggered. Legislation in Quebec, the Yukon and at the federal level is based on this model.

2.3 Integrated

This approach is commonly defined as one which combines elements of both the pro-active and complaint-based models. The employer is initially required to implement pay equity, after which a complaint mechanism can be applied. Ontario and Prince Edward Island incorporate this approach into their Acts.

3.0 METHODS OF IMPLEMENTING PAY EQUITY

3.1 Legislation

This approach has been the one most commonly used for implementation of pay equity. The following jurisdictions have implemented pay equity through legislation: Manitoba, Ontario, Prince Edward Island, New Brunswick, Nova Scotia, Yukon, Quebec, and the Federal government.

3.2 Collective Bargaining

The Newfoundland and Labrador Treasury Board and the five unions representing employees in the public sector have implemented pay equity through a collective agreement.

British Columbia has recently adopted a pay equity program through this means.

3.3 Voluntary

This approach asks employers to voluntarily agree to achieve pay equity. Voluntary models have most commonly been applied to affirmative action and employment equity programs.

3.4 Contract Compliance

A requirement where companies receiving government contracts are required to implement pay equity prior to receiving contracts.

4.0 ASSESSMENT OF THE CURRENT LEGISLATION

4.1 Phase 1

The pay equity process for Phase 1 (civil service, corrections workers, highway workers and employees of the Victoria General and Nova Scotia Hospitals who are not civil servants) began on September 1, 1988. At this time, there were approximately 12,500 employees in this sector: 6,367 women and 6,086 men.

In November 1988, a Joint Union Management Pay Equity Committee was established to undertake the pay equity process. The Committee provided for fourteen (14) representatives: it was composed of eight (8) women, six (6) men; five (5) management, eight (8) union and one (1) individual

representing the non-unionized civil service administrative support personnel.

Following the selection of the job evaluation system, 188 job classifications were identified as dominated classes to be evaluated under pay equity. Of the 188 identified dominated classes, 115 of these were male dominated classes and the remaining 73 were female dominated classes. Following the pay equity process, 53 of the 73 female classes were eligible for wage adjustments. These adjustments ranged from $404.00 to $9,945.00[2]. Twenty female dominated classes did not receive wage adjustments as their maximum hourly rates exceeded the pattern of wages paid to male dominated classes at comparable job value.

4.2 Phase 2

On September 1, 1989, crown corporations, hospitals and school boards began the pay equity process. It was at this time that some of the inherent difficulties with the current legislation became apparent. Early in the process it became evident that many employers covered under Phase 2 did not have sufficient male or female-dominated job classes which met the incumbency criteria defined in the Act. The Act specifies, that within six months of the pay equity process beginning, an employer and all of its employee representatives shall

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[2] For full details of the Phase 1 pay equity results see: Pay Equity Implementation in Nova Scotia: Phase 1. Joint Union Management Committee, September 1990.

endeavour to agree upon a single, gender-neutral job evaluation system, for the evaluation of all female-dominated and male-dominated classes employed by the employer. Therefore, the Commission advised that to be reasonable, a job evaluation system need only be selected where dominated classes exist.

(a) Hospitals

On September 1, 1989, 44 hospitals[3] began the pay equity process. These 44 hospitals employ a total of approximately 12,500 employees: 11,000 of whom are women; 1,500 are men. Women comprise 88 percent of employees in this hospital sector.

Of the 44 hospitals covered by the Act, a male-dominated job class was found in only 8. At 6 of these 8 hospitals, only one male-dominated job class, that of UTILITY WORKER, was found. In each of these hospitals, only one female-dominated class was found at a salary rate less than UTILITY WORKER, that of GENERAL WORKER. The pay equity committees at these 6 hospitals agreed to simply raise the pay of the General Worker to that of Utility Worker, without going through the process of selecting a job evaluation system. Of the 44 hospitals under this Phase, the process is proceeding in only 2.

---

[3] For the purposes of the Pay Equity Act, a hospital means a hospital to which the Hospital's Act applies.

(b) School Boards

The Province's 21 school boards employ in excess of 15,000 employees: 6,000 of whom are men; 9,000 are women. School Boards began the pay equity process on September 1, 1989. A province-wide committee was formed for the purposes of jointly selecting a job evaluation system to be applied at each individual school board level. The pay equity process is currently underway in the school board sector and at the time of writing no conclusive data was available to determine the impact of the legislation.

c) Crown Corporations

For the purposes of the Pay Equity Act a crown corporation means one of 14 corporations listed in the Schedule to the Act. These corporations ranged in size from 0 employees to 2700 employees. While any wage adjustments resulting from this sector will not be known until July 1991, it is evident that pay equity will have a varied impact on crown corporations.

An overview of the impact of the Pay Equity Act on crown corporations is shown in Appendix 3. Four crown corporations were not required to proceed with pay equity because they each had less than 19 employees, making the strict application of the Act impossible. The process did not proceed in 3 other corporations because none had a female-dominated job class. Similarly, one corporation did not proceed because of the

absence of a male-dominated class. One corporation did not proceed because of the absence of a male and female dominated class. Two of the corporations have agreed to follow applicable results from the Phase 1 pay equity process, as each was normally required (either by regulation or agreement) to follow civil service pay scales. One corporation, where female and male dominated classes did not exist, decided to voluntarily proceed with the process using less restrictive incumbency criteria for dominated job classes (i.e. less than 10 employees). The process, as defined in the Act, is proceeding in only 2 of the 14 crown corporations. In both of these corporations, committees have been established and have successfully selected a job evaluation system. Job evaluation of dominated classes is currently underway in these two establishments.

4.3 Phase 3

(a) Universities

The eleven universities listed in Schedule "B" of the Pay Equity Act began the pay equity process on October 1, 1990. At the time of writing, initial employee audits had been received from most universities and it would appear that the incumbency criteria will exclude a substantial number of female-dominated and male-dominated job classes from the evaluation process. In addition, it is likely that a number of the smaller universities will not be required to select a

job evaluation system due to the absence of male and/or female dominated job classes.

(b) Municipalities

The pay equity process for the Province's 66 cities, towns and counties, 26 villages, and an undetermined number of municipal enterprises began on October 1, 1990. Data received to date, indicates that only 3 of 33 reporting municipalities are likely to have dominated classes. Six out of 6 reporting villages do not have sufficient numbers of employees to meet the incumbency criteria.

5.0 ISSUES ARISING FROM THE APPLICATION OF THE PAY EQUITY ACT

A number of issues have arisen through the application of the Pay Equity Act in the phases which it currently covers.

5.1 Incumbency Criteria

The Nova Scotia Pay Equity Act, defines a "female-dominated class" and a "male-dominated class" as follows:

> "female-dominated class" means a group of ten or more employees with the same employer in the same classification, where sixty percent or more of the employees are female;"
>
> "male-dominated class" means a group of ten or more employees with the same employer in the same classification, where sixty percent or more of the employees are male;"

The requirement that a dominated class have a minimum of ten incumbents and that sixty percent of those incumbents be

male or female (the "10/60" rule) has been a primary issue identified in each of the three phases. This rule has consistently restricted the application of pay equity, from reducing the effect, to rendering the legislation unapplicable.

The impact of the incumbency criteria of "10/60" has had an undetermined effect on the implementation of pay equity in Phase 1. Data is not available at this time to indicate the total number of male and female dominated job classes which might have been included in the pay equity process if a less restrictive incumbency criteria were used. However, in their brief to the Commission, the Interdepartmental Committee on the Status of Women cited a number of job classes known to them that were excluded because they did not meet the minimum of 10 requirement.

In the hospital sector, the "10/60" rule has significantly reduced the impact of pay equity. The Commission heard from a hospital employee who was excluded from the process:

> I am one of <u>six</u>, all of us female, Pharmacy Assistants; therefore, in the eyes of my provincial government I am unworthy of their consideration and protection. Apparently, the government has the impression that groups of "nine or less" are insensible to or are not affected by "pay inequity which is based on sex discrimination"...the government is trying to eliminate discrimination based on sex by replacing it with discrimination based on numbers.

The Nova Scotia Government Employees Union,

> Many female dominated classes employed in smaller employer units will not benefit from the law because

of the obvious fact that the work units are not large enough to identify female dominated classes that meet the incumbency criteria. Classifications with less than ten (10) incumbents cannot benefit from the law as they, for the purpose of the process are not recognized as a classification and therefore do not have their jobs evaluated and job worth established...

The Halifax-Dartmouth Chapter of Professional Secretaries International,

Implementation of pay equity in the public sector has been restricted to job classes where ten or more employees make up a particular classification and 60 percent are of the same sex. This has resulted, and will continue to result, in considerable inequity throughout the public sector as certain agencies and organizations coming under this section of the pay equity legislation do not meet these parameters. Consequently, there are secretaries in the public sector who will receive the benefits of pay equity and others who will not, regardless of qualifications.

The Canadian Union of Public Employees (CUPE),

A major roadblock in the law for women covered under Phases Two and Three is the requirement that there be 10 or more people in a job classification for it to be designated "female-dominated" or "male-dominated". The workplaces covered in Phase Two and Three are small and therefore have very few or indeed no "female classes" and/or no "male classes" because there are not the necessary 10 or more people in a job to form a class.

The Ontario Pay Equity Commission reported,

Unless a female-dominated or male-dominated job class has ten or more employees in it, it is irrelevant under Nova Scotia's legislation.

The Nova Scotia Nurses Union,

Why 10? Why not 15? Why not 3? Is a woman any less discriminated against because she is the only person doing a particular job? Why does the law require that she have at least nine co-sufferers?

5.2 Historical Incumbency

In addition to the restrictiveness of the "10/60" rule, the Commission heard several presentations calling for more flexibility in the definitions of female and male dominated job classes. In particular, the provision to include classes that do not meet the strict percentage threshold (60 percent) but are clearly, because of historical incumbency, male or female dominated.

The Nova Scotia Government Employees Union,

> It is extremely important that the legislation include an historical incumbency provision. Such a provision allows for the parties to agree to waive incumbency criteria if it can be established that classes have traditionally been occupied by employees of either sex. This type of provision benefits employees in female dominated classes in two ways: it allows for inclusion of classes that might otherwise be excluded on the base of incumbency criteria, and it allows for identification of male dominated classes to be used as comparator classes.

The Nova Scotia Federation of Labour,

> ...there is no provision to force the groups to look at the historical incumbency or gender stereotype of a class. If a class does meet the 10 number but falls slightly short of 60%, looking at the historical incumbency criteria would permit identification of the pattern of the sex of the individuals performing the job with the idea in mind to establish it as a dominated class.

5.3 Female-dominated Workplaces

In certain establishments covered by the Pay Equity Act, a lack of male comparators has limited the impact of pay equity. This has been most noticeable in the hospital sector in Nova Scotia. However, while a lack of male comparators was

certainly found in most hospitals, this problem may have been created primarily due to the restrictiveness of the "10/60" rule. Employee audit data indicate that there would be a large increase in the number of male-dominated job classes in the hospital sector if the incumbency criteria was reduced.

While reducing the "10/60" rule would improve the effectiveness of the legislation in workplaces which are heavily female dominated, it would not eliminate all of the problems in these workplaces.

The Nova Scotia Government Employees Union,

> In predominated female dominated environments there lacks sufficient number of male employees to comprise male dominated classes to be used as comparator classes. Such is true with respect to hospital employees in the province, also true for employees in day care centres, homes for special care, school boards, and municipal and university settings. It is the female dominated occupations in the health care, service and clerical sector which are among those notoriously undervalued and underpaid.
>
> Where an insufficient number of male employees to form a male dominated class exists, and where an insufficient number of male dominated classes exists with an employer unit, to establish a male wage policy line, reference to other agreed upon male dominated classes from another employer unit may be made by the joint committee to determine the employers wage policy (pay) line for male dominated classes.

The Nova Scotia Federation of Labour,

> In a lot of employer units, there is either a very limited number or no male dominated groups which can be used for comparison with female dominated classes.

The Canadian Union of Public Employees,

> A third major flaw will affect workers in all-female workplaces such as nursing homes and day care centres but also those female workers where there are few male jobs to compare themselves with. The law says "female

jobs" must be compared to "male jobs" in order to determine if there is wage discrimination. What happens to nursing home and day care workers?

Janet Romaine,

In situations where no male comparator group exists, specify an alternative method of determining equitable pay for the female group.

Alexa McDonough, Leader of the New Democratic Party,

the requirement that a male comparator group must exist for female classes to be considered for pay equity adjustments be dropped and replaced by allowing the joint committee to seek a suitable male-dominated group in an outside employee unit or in developing a schedule or range of equal pay for a male-dominated group performing work of equal value or comparable value.

The Ontario Pay Equity Commission,

Ontario's legislation, like Nova Scotia's, requires comparisons between female dominated and male dominated jobs. This job-to-job approach has limitations. Most notably, many female jobs fail to find a match...We suggest that Nova Scotia use proportional value. Proportional value has a number of advantages. For instance, it can be used in any organization which has a sufficient number of male jobs (as low as three). It leads to far fewer anomalies than the job-to-job model.

The Nova Scotia Advisory Council on the Status of Women,

The legislation allows that pay equity be applied only where there is a narrowly-defined male comparator group. With this restriction, many deserving women have already been denied pay equity in the public sector and many more will be affected in the private sector...Two approaches may serve to address this issue. The first is by plotting a wage line using a broad and representative range of male-dominated and non-dominated job classes. Female-dominated jobs that do not have a direct male comparator will be compared to the wage line. Alternatively, proportional value allows for proportional comparison between jobs which may not be equal in value.

The issue of female-dominated workplaces in relation to pay equity has most seriously and recently been addressed by the Ontario Pay Equity Commission. In their Report to the Minister of Labour on Options relating to the Achievement of Pay Equity in Sectors of the Economy which are Predominately Female, the Ontario Pay Equity Commission recommended a number of options which included proportional value and proxy comparison.

Proportional Value

The proportional value approach is a viable option for achieving pay equity in organizations that have some male job classes. This approach is presently used to address pay equity in Manitoba, Prince Edward Island, and New Brunswick. It is not a workable option in organizations that have no male employees.

The Ontario Pay Equity Commission describes three possible approaches to proportional value. The first approach allows female job classes that did not find comparators to receive adjustments proportional to those received by female job classes that did find comparators. The second approach requires that the value of male and female job classes be expressed in points. By using simple arithmetic, it is possible to determine the relationship between the point value and the wages. This is referred to as the formula approach. The most complex approach involves drawing a wage line. All

three approaches are based on the relationship between the value of male job classes and the current salary rates of those male job classes.

Proxy Comparison

The research conducted by the Ontario Pay Equity Commission indicates that proxy comparison is a viable means to achieve pay equity in public sector organizations with no male job classes. Proxy comparison extends the search sequence outside of the organization. Proxy comparison requires the borrowing of information by a seeking organization from a proxy organization. The seeking organization is attempting to redress gender pay discrimination but has few, if any, male jobs, and so needs some additional information in order to complete its pay equity process. (The term "seeking organization" is used to refer to both the employer, and to any bargaining agent representing those in the female job classes.) The proxy organization is the one from which information is borrowed.

5.4 Achievement of Pay Equity

Section 17 of the Nova Scotia Pay Equity Act provides for "class" to "class" comparison. In order for a female job class to receive adjustments there must be at least one male job class of equal or comparable value. This is commonly referred to as "job-to-job" comparisons. If there are no male

comparator job classes, as defined by Section 17 of the Pay Equity Act, that female job class will not be entitled to an adjustment.

"Job-to-line" comparison provides for the creation of a male wage line using all of the male job classes in the organization. The female job classes would then be compared to the male wage line as opposed to a specific job class.

The Nova Scotia Government Employees Union,

> This entire section [Section (17)], the origin found in the Ontario legislation, is very restrictive when compared to other agreements specifically with respect to defining how pay equity is to be achieved. Once again, to refer to the agreement reached in Newfoundland which provides for construction of a wage policy line, such a provision would allow for greater flexibility for a joint committee in truly establishing pay equity.

The Canadian Union of Public Employees,

> In the interests of achieving full pay equity, Section 17 should be replaced. As it stands pay equity can only be achieved if there is a male-dominated class of equal or comparable value. The other scenarios offered by the law allow women to compare themselves to male classes of lower value. If, however where there are male classes, female classes could receive the wage on the male pay line where the evaluation points for the female class equals those of a male class (even when there is no male class) then pay equity would be achieved. This is the regression analysis approach.

5.5 Review Process

Concerns about the lack of an "appeal" process under the Act have been brought to the forefront since the wage adjustments for Phase 1 were announced in June 1990.

The Interdepartmental Committee on the Status of Women,

> An appeal process would be in keeping with the spirit of fairness and equity promoted in this legislation and would be an enhancement to the current legislation. The appeal process could be a joint employee-employer committee with possible final recourse to the Pay Equity Commission.

The Nova Scotia Government Libraries Council,

> A major concern is the lack of an appeal process. It represents a serious weakness in any administrative decision-making process, and in this case, where so many people are so immediately affected, the lack of an appeal process is sorely felt. We would recommend that an appeal process be included, and that those appeal level decisions be taken by someone other than those persons who made the decision which is being appealed. This conforms to natural justice and the principles of administrative law.

Currently, the Act does not specifically provide for a 'complaint', 'appeal', or 'review' process. However, Subsection 9(2) does allow employee representatives to file reports: "an employee representative may submit a report to the Commission at any time respecting the progress in implementing pay equity."

5.6 Communications

Reports of a lack of communication to employees in Phase 1 were expressed by the Interdepartmental Committee on the Status of Women,

> The single most frequent complaint about the pay equity process was the lack of communication, especially during and after the evaluation process.

During the past two years, the Commission has become

increasingly aware of the widespread confusion surrounding the concepts of 'pay equity', 'internal equity', 'employment equity', 'equal pay for equal work', and 'equal pay for work of equal value'. Compounding the confusion with terminology, the pay equity process is not straightforward -- the process is complicated and technical. Furthermore, expectations of pay equity are extremely high. In the course of their educational work with pay equity committees throughout the province, Commission staff have stressed the importance of communications with employees and others involved in the pay equity process. It is very important to keep in mind that pay equity, and any initiative aimed at ensuring it, will not solve every pay discrepancy or cure all economic ills for women.

5.7 Disclosure of Information

Laboratory Technologists appearing before the Commission were very concerned about the lack of information available to them about the pay equity process,

> Given the importance of the study, the number of people it will affect, and the fact that it was a government procedure, the methods used are open to question.

The technologists requested "access to the specific job evaluation data used by the Pay Equity Committee at the Victoria General Hospital in order to ensure employees that the study was done fairly." This concern was also expressed by the Nova Scotia Government Libraries Council,

> ...the process is not open enough. Once the decisions are made, it is not possible to receive a full explanation of the reasoning behind the decision. The provisions of section 20(2) of the Pay Equity Act appear to be inadequate to ensure disclosure of reasons. This withholding of analysis and of reasoning is a particular concern when one level of a series classification is adjusted and the other levels are not.

Currently, Subsection 20(1) and 20(2) of the Pay Equity Act requires:

> 20(1) Every agreement made pursuant to this Act shall be filed forthwith by the employer with the Commission and thereupon is binding upon the parties thereto.
>
> 20(2) An employer or an employee to whom an agreement on pay equity pertains may inspect any such agreement filed in the office of the Commission and is entitled to a copy of the agreement upon payment of a reasonable charge therefor.

However, to date, the Commission has not required employers to file specific details of the job evaluation process (i.e. point values, comparator jobs, etc). Elsewhere in the Act, Subsection 10(1)(b) permits the Pay Equity Commission to "require the production of documents and the supplying of information."

5.8 Maintenance

The Canadian Union of Public Employees, in their brief to the Commission, asked "What is the point of the pay equity exercise if pay equity is not to be maintained?" Similarly, the Nova Scotia Advisory Council on the Status of Women stated,

> Fundamental to the concept of pay equity, in our opinion, is its ongoing nature. While a one-time, across-the-board evaluation process is essential to correct existing inequalities, so too is a maintenance stipulation. Employers must be required not only to adjust wages to end pay discrimination against female-dominated jobs but also to ensure that such inequalities do not creep back into their compensations systems. The maintenance requirement should be enforced through a combination of employee-originating complaints and pro-active investigation by the Commission.

The Ontario Pay Equity Commission,

> Pay equity is sometimes described as a "one-shot deal" - something that can be departed from after being achieved. We think it important to ensure that pay equity is a continuing obligation and recommend that Nova Scotia's legislation reflect that. Section 7 of Ontario's law, for example, requires that pay equity be established and maintained by employers and bargaining agents.

5.9 Definition of Pay

The definition of "pay" in the Nova Scotia Pay Equity Act does not include benefits. The exclusion of benefits was an issue identified during the public consultation process.

The Canadian Union of Public Employees,

> Benefits represent a significant part of the wage package amounting to 20-30% of total payroll cost...During the years that major improvements were negotiated in benefit plans, they were based on the assumption that male workers were the "providers" and "family heads". For this reason it is important to include benefits when assessing wage discrimination to ensure that women workers are not being treated differently than male workers.

In their brief to the Commission, the Ontario Pay Equity Commission stated,

> If identical benefits are provided to all employees of an employer, it does not matter if these benefits are included in calculating "pay". They will offset one another. However, if differential benefits are provided to employees (which may be more common in the private sector) it is our view that they should be included. Otherwise the "pay" that is compared will be inaccurate.

5.10 Industry-wide Application

In both the hospital and school board sectors of Phase 2, the issue of an industry-wide application of the pay equity process has been raised. Early in the process, the Commission made the determination that for the purposes of pay equity, each individual hospital and school board is an employer.

In the hospital sector, despite the existence of a central body (the Nova Scotia Association of Health Organizations) that represents hospital employers, there is no formal centralized collective bargaining process.

The Nova Scotia Government Employees Union,

> Unions representing hospital employees believe that Section 3(h) of the Act allows for pay equity to proceed on an industry wide basis for example with hospitals within the province. As hospitals employ basically the same groups of classifications of employees and wage parity has been a long standing issue with these classifications within the province, it seems only reasonable that a single specific approach to pay equity be followed in this environment. The benefits which could and should be realized from an industry wide approach to pay equity far outweigh the problems created to date and those yet to be realized by proceeding through this process separately with each hospital being treated as a separate unit (employer). While it is recognized that each hospital in the province is managed by a separate board, all of the work performed in hospital settings is basically the same, job classifications, while they may have small functional differences, are largely the same.

The Canadian Union of Public Employees,

> It's outrageous that taxpayers' money is being spent to negotiate pay equity on an employer by employer basis. This means for example, that each of the 49 hospitals could be sitting down separately and hiring and paying (large sums) 49 different management consultants to evaluate the same jobs in different hospitals. A more efficient and sensible way to proceed is to sit at a joint provincial table where a consultant is employed and the evaluation of classes are done once at the table.

The Nova Scotia Nurses Union, during their oral presentation,

> It makes sense to us that there be a province-wide application of pay equity, certainly within the hospital sector and as well within homes for special care...in terms of the hospital sector obviously, while there are separate hospitals they are all funded from the same till.

5.11 Penalties

In their brief to the Commission, the Ontario Pay Equity Commission expressed the merit of having an Offenses and Penalties provision in pay equity legislation as a deterrent to those tempted not to comply. Specifically, the Ontario legislation reads,

> Every person who contravenes or fails to comply with subsection 9(2) or subsection 35(5) or an order of the Hearings Tribunal is guilty of an offence and on conviction is liable to a fine of not more than $5,000, in the case of an individual, and not more than $50,000, in any other case.

5.12 The Role of the Pay Equity Commission

In both written and oral submissions during the public consultation process, the Commission heard several concerns and recommendations regarding both the composition and role of

the Pay Equity Commission.

The Nova Scotia Advisory Council on the Status of Women,

> Most administrative bodies provide for a two-tiered approach; accordingly, the Pay Equity Commission would be involved with administration, education, and mediation, and a separate and impartial tribunal would hear and settle disputes. The separation of these duties is important for impartiality in both fact and appearance. This separation of roles frees the Commission to pursue without hindrance its pro-active initiatives. The tribunal should include an employee representative, an employer representative, and a chairperson decided upon by these two representatives.

The Nova Scotia Nurses Union,

> The notion that half of the members on the Commission should come from employees or employee organizations and half from employers or employer organizations has not been met...The principle that employees and employers [sic] and that there be an independent Chair.

6.0 OPTIONS/RECOMMENDATIONS

6.1 Incumbency Criteria
6.2 Historical Incumbency

The "10/60" rule in its strictest sense is a problem unique to Nova Scotia. While other provinces (Manitoba and New Brunswick) also have a "10/60" rule, additional provisions in their legislation make the inclusion of smaller job classes more of a reality. In Ontario and Prince Edward Island a dominated class need only have one incumbent to be included in the pay equity process.

The Nova Scotia Pay Equity Commission recommends that the minimum of ten incumbents be omitted from the definitions of "female-dominated class" and "male-dominated class" to incorporate the principle of single incumbency. The Commission further recommends that a provision to allow for historical incumbency be incorporated into these definitions.

6.3 Female-dominated Workplaces

Proportional value is seen as a useful tool in addressing concerns regarding the effectiveness of pay equity in female-dominated workplaces. The adoption of proxy comparison would change the intent of the Nova Scotia Pay Equity Act by forcing an employer to look at another establishment's pay schedules and possibly having to incorporate them into that employers establishment. While proxy comparisons should not be prohibited if an employer or pay equity committee chooses to

take this initiative, the Commission does not feel this should be mandatory.

The Nova Scotia Pay Equity Commission recommends that the Pay Equity Act be amended to provide for the principle of proportional value.

6.4 Achievement of Pay Equity

Section 17 of the Pay Equity Act which requires "job-to-job" comparisons, results in a very restrictive application of pay equity. This method of comparison is based on the assumption that current male job rates are perfectly in line. In reality, there are many anomalies in male pay rates and the Commission feels it is essential that this section of the Act take these anomalies into consideration and allow more flexibility in the achievement of pay equity. Therefore, methods which permit reasonable latitude in the practical application of the process are essential in meeting the spirit and intent of the legislation.

The Nova Scotia Pay Equity Commission recommends that Section 17 of the Pay Equity Act be amended to permit "job-to-line" and/or similar regression analysis techniques as a means of determining pay equity.

6.5 Review Process

An unrestricted and automatic right of appeal by individual employees may be detrimental to the pay equity

process. However, the Commission feels there is merit to a review process if there has been a contravention of the legislation or a violation of due process.

The Nova Scotia Pay Equity Commission recommends that the Act be amended to provide a review process where there has been a contravention of the Act or a violation of due process.

6.6 Communications

Since its inception, the Commission has stressed that communication strategies are essential for pay equity but recognizes that this aspect of the process cannot be legislated. There are four players when establishing responsibility for communication. They are: the Pay Equity Commission; the employer; the pay equity committee; and individuals affected by the process.

The Nova Scotia Pay Equity Commission recommends that in establishments where pay equity is not applicable, employers should clearly communicate why. In addition, it strongly urges pay equity committees to develop clear and comprehensive communication strategies. If effectively and consistently applied, communications will substantially reduce misunderstandings. Many of the inquiries to the Commission office could have been avoided if sound dialogue, both written and oral, had been established by an employer or pay equity committee.

The Commission also suggests that there is clear evidence

that there has been certain complacency on the part of the employees affected by the process. There is an assumption on the part of many employees that increases in pay will be the automatic result of pay equity. When this does not occur or where an increase in pay has not met expectations, there is a tendency to assume that an injustice has occurred. Employees have a responsibility to learn about pay equity and to keep abreast of the events surrounding the process. Employees need a solid foundation of knowledge if their concerns are to be considered credible by all parties involved.

The Nova Scotia Pay Equity Commission recommends that additional resources be provided to the Commission to expand its educational programs.

6.7 Disclosure of Information

At this time, the Commission feels there is adequate provisions in the Act for the disclosure of any information required by employers, employee representatives, or individuals, to access the proposed review process.

6.8 Maintenance

The Nova Scotia Pay Equity Commission recommends that the purpose of the Pay Equity Act be changed to read:

> **The purpose of this Act is to increase and maintain the pay of employees in classes which are predominately female where it is determined, by the process set out in this Act, that, by reason of sex discrimination, those employees are paid less than they should be.**

The Commission recognizes that there are a number of different approaches to ensure the maintenance of pay equity. Specific recommendations in this area will require further study and will be forthcoming.

6.9 Definition of Pay

The Nova Scotia Pay Equity Commission recommends that the definition of "pay" (Subsection 3(1)(o)) be amended to include benefits except where benefits provided to all employees are identical.

6.10 Industry-Wide Application

The Commission looked at the issues surrounding the minimum requirement that pay equity be undertaken on an employer by employer basis. While the Commission recognizes that there may be significant benefits of a joint venture, the Commission does not recommend that this be mandatory.

6.11 Penalties

The Commission does not feel changes to the Act to incorporate penalties are required at this time.

6.12 The Role of the Pay Equity Commission

The Commission has carefully reviewed its role and responsibilities as defined by the Pay Equity Act. While no pay equity initiative can hope to close the entire wage gap

and bring about full economic equality for women, the Commission recognizes that changes to the Pay Equity Act are urgently needed to ensure that pay equity is achieved in Nova Scotia.

The Commission is confident that the adoption of the changes recommended in this report will allow the Commission to more fully meet its pro-active mandate. The Commission is currently satisfied with the manner in which it is structured and permitted to operate.

7.0 CONCLUSION

The Commission wishes to express its appreciation to those persons and organizations who took time to submit reports and make recommendations regarding the current legislation. It wishes those who participated in this exercise to know that all submissions were carefully considered. Much of what was presented to the Commission is reflected in the form of recommendations.

8.0 SUMMARY OF RECOMMENDATIONS

(1) The Nova Scotia Pay Equity Commission recommends that the minimum of ten incumbents be omitted from the definitions of "female-dominated class" and "male-dominated class" to incorporate the principle of single incumbency. The Commission further recommends that a provision to allow for historical incumbency be incorporated into these definitions.

(2) The Nova Scotia Pay Equity Commission recommends that the Pay Equity Act be amended to provide for the principle of proportional value.

(3) The Nova Scotia Pay Equity Commission recommends that Section 17 of the Pay Equity Act be amended to permit "job-to-line" and/or similar regression analysis techniques as a means of determining pay equity.

(4) The Nova Scotia Pay Equity Commission recommends that the Act be amended to provide a review process where there has been a contravention of the Act or a violation of due process.

(5) The Nova Scotia Pay Equity Commission recommends that additional resources be provided to the Commission to expand its educational programs.

(6) The Nova Scotia Pay Equity Commission recommends that the purpose of the Pay Equity Act be changed to read:
The purpose of this Act is to increase and maintain the pay of employees in classes which are predominately female where it is determined, by the process set out in this Act, that, by reason of sex discrimination, those employees are paid less than they should be.

(7) The Nova Scotia Pay Equity Commission recommends that the definition of "pay" (Subsection 3(1)(o)) be amended to include benefits except where benefits provided to all employees are identical.

9.0 APPENDICES

APPENDIX 1
CALL FOR SUBMISSIONS

Call For Submissions

The Nova Scotia Pay Equity Commission is interested in receiving written submissions from individuals and organizations in relation to two major areas of concern regarding pay equity in Nova Scotia:

(1) How pay equity should be implemented in the private sector; and

(2) How the pay equity process currently prescribed in the Pay Equity Act could be made more comprehensive.

An opportunity will be afforded to those individuals and organizations who may wish to appear before the Commission in support of their written submissions.

Written submissions must be received not later than September 30, 1990

All briefs, correspondence or inquiries should be addressed to: Pay Equity Commission, P.O. Box 697 Halifax, N.S. B3J 2T8, Tel: (902) 424-8595, Fax: (902) 424-3239.

Nova Scotia
Pay Equity Commission

APPENDIX 2

The following written submissions were received by the Commission regarding the current Pay Equity Act.

Demise Osborne, Individual
Janet Romaine, Individual*
Interdepartmental Committee on the Status of Women
L'Association des Acadienne de la Nouvelle-Ecosse*
Laboratory Technologists, Victoria General Hospital*
Judith Anne MacAskill, Individual
NS Government Employees Union*
Alexa McDonough, Leader of the New Democratic Party*
Professional Secretaries International, Halifax/Dartmouth
NS Federation of Labour*
Ontario Pay Equity Commission*
NS Advisory Council on the Status of Women*
NS Nurses Union*
Canadian Union of Public Employees*
NS Government Libraries Council
NS Confederation of University Faculty Associations*

* These groups and individuals also appeared before the Commission in support of their written submission on November 22nd and 23rd, 1990.

APPENDIX 3

Crown Corporation	Total Employees	# Female Classes	# Male Classes
Less than 19 employees:			
CC3	0	0	0
CC9	6	0	0
CC10	1	0	0
CC13	14	0	0
No female classes:			
CC2	55	0	1
CC6	39	0	1
CC12	1310	0	n/a
No male classes:			
CC1	99	1	0
No female or male classes:			
CC14	126	0	0
Voluntarily proceeding:			
CC8	124	0	0
Following Civil Service:			
CC4	121	3	1
CC11	25	0	0
Process proceeding:			
CC7	2681	n/a	n/a
CC5	1012	3	9

Note: n/a = not available